

MONTANA LEGISLATIVE HISTORY

Chapter 308 19 91

Bill H _____ S 265 Original bill & history / C

H. Committee on Nat'l Revenue

Hearing Date(s) Mar 14 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out _____ ☐ C

S. Committee on Nat'l Revenue

Hearing Date(s) Feb 11 ☒ C

Feb 18 ☒ C

_____ ☐ C

_____ ☐ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE FINAL STATUS

SB 266

TRANSMITTED TO HOUSE			
3/04	FIRST READING		
3/04	REFERRED TO STATE ADMINISTRATION		
3/14	HEARING		
3/14	TABLED IN COMMITTEE		
3/19	TAKEN FROM TABLE		
3/19	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/23	2ND READING CONCURRED	70	24
3/25	3RD READING CONCURRED	71	25
RETURNED TO SENATE WITH AMENDMENTS			
3/28	2ND READING AMENDMENTS CONCURRED	49	0
4/01	3RD READING AMENDMENTS CONCURRED	48	0
4/03	SIGNED BY PRESIDENT		
4/03	SIGNED BY SPEAKER		
4/04	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 365		

EFFECTIVE DATE: 4/06/91

SB 265 INTRODUCED BY GROSFIELD, ET AL.

CLARIFY RIGHT TO BENEFICIALLY USE, SELL, OR LEASE
SALVAGED WATER

BY REQUEST OF GOVERNOR

2/02	INTRODUCED		
2/02	FISCAL NOTE REQUESTED		
2/04	REFERRED TO NATURAL RESOURCES		
2/04	FIRST READING		
2/08	FISCAL NOTE RECEIVED		
2/11	HEARING		
2/11	FISCAL NOTE PRINTED		
2/18	REVISED FISCAL NOTE RECEIVED		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	49	0
2/21	3RD READING PASSED	45	2
TRANSMITTED TO HOUSE			
3/04	FIRST READING		
3/04	REFERRED TO NATURAL RESOURCES		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	85	3
3/19	3RD READING CONCURRED	88	11
RETURNED TO SENATE			
3/26	SIGNED BY PRESIDENT		
3/27	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 308		

EFFECTIVE DATE: 10/01/91

SB 266 INTRODUCED BY GROSFIELD, ET AL.

REVISE THE MONTANA WATER USE LAWS

BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES &
CONSERVATION

2/02	INTRODUCED		
2/02	FISCAL NOTE REQUESTED		
2/04	REFERRED TO NATURAL RESOURCES		
2/04	FIRST READING		
2/08	FISCAL NOTE RECEIVED		
2/11	HEARING		
2/11	FISCAL NOTE PRINTED		
2/18	REVISED FISCAL NOTE PRINTED		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		

SENATE BILL NO. 265

INTRODUCED BY GROSFIELD, BENGTON, REAM,
WEEDING, HARPER, GRADY, THOFT, SWYSGOOD
BY REQUEST OF THE GOVERNOR

IN THE SENATE

FEBRUARY 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON NATURAL RESOURCES.

 FIRST READING.

FEBRUARY 19, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 21, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 45; NOES, 2.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON NATURAL RESOURCES.

 FIRST READING.

MARCH 15, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN. REPORT ADOPTED.

MARCH 16, 1991 ON MOTION, CONSIDERATION PASSED

MARCH 18, 1991 SECOND READING, CONCURRED IN.

MARCH 19, 1991 THIRD READING, CONCURRED IN.
 AYES, 88; NOES, 11.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 20, 1991 RECEIVED FROM HOUSE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *265*
 2 INTRODUCED BY *Griffith Bengtson Ream*
 3 *Wendy* BY REQUEST OF THE GOVERNOR *Flanagan Grady*
 4 *Thrift*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE RIGHT TO
 6 BENEFICIALLY USE, SELL, OR LEASE SALVAGED WATER; DEFINING
 7 "SALVAGE"; PROVIDING CRITERIA FOR APPROVAL OF CHANGES IN
 8 APPROPRIATION RIGHTS INVOLVING SALVAGED WATER; ESTABLISHING
 9 THE PERIOD AFTER WHICH THE RIGHT TO SALVAGED WATER IS
 10 FORFEITED; AND AMENDING SECTIONS 85-2-102 AND 85-2-402,
 11 MCA."

12 STATEMENT OF INTENT

13
 14 A statement of intent is required for this bill in order
 15 to provide guidance to the department of natural resources
 16 and conservation concerning the adoption of rules to allow
 17 the appropriation, use, and change of use of salvaged water.
 18 The legislature directs the department of natural resources
 19 and conservation to adopt rules that promote the
 20 conservation and efficient use of water by implementing the
 21 provisions of this bill.

22
 23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Salvaged water. It is the
 25 declared policy of the state in 85-1-101 to encourage the

1 conservation and full use of water. Consistent with this
 2 policy, holders of appropriation rights who salvage water,
 3 as defined in 85-2-102, may retain the right to the salvaged
 4 water for beneficial use. Any use of the right to salvaged
 5 water for any purpose or in any place other than that
 6 associated with the original appropriation right must be
 7 approved by the department as a change in appropriation
 8 right in accordance with 85-2-402. Sale of the right to
 9 salvaged water must also be in accordance with 85-2-403, and
 10 the lease of the right to salvaged water for instream flow
 11 purposes must be in accordance with 85-2-436.

12 Section 2. Section 85-2-102, MCA, is amended to read:

13 "85-2-102. (Temporary) Definitions. Unless the context
 14 requires otherwise, in this chapter the following
 15 definitions apply:

16 (1) "Appropriate" means to:

17 (a) divert, impound, or withdraw (including by stock
 18 for stock water) a quantity of water;

19 (b) in the case of a public agency, to reserve water in
 20 accordance with 85-2-316; or

21 (c) in the case of the department of fish, wildlife,
 22 and parks, to lease water in accordance with 85-2-436.

23 (2) "Beneficial use", unless otherwise provided, means:

24 (a) a use of water for the benefit of the appropriator,
 25 other persons, or the public, including but not limited to

1 agricultural (including stock water), domestic, fish and
2 wildlife, industrial, irrigation, mining, municipal, power,
3 and recreational uses;

4 (b) a use of water appropriated by the department for
5 the state water leasing program under 85-2-141 and of water
6 leased under a valid lease issued by the department under
7 85-2-141; and

8 (c) a use of water by the department of fish, wildlife,
9 and parks pursuant to a lease authorized under 85-2-436.

10 (3) "Board" means the board of natural resources and
11 conservation provided for in 2-15-3302.

12 (4) "Certificate" means a certificate of water right
13 issued by the department.

14 (5) "Change in appropriation right" means a change in
15 the place of diversion, the place of use, the purpose of
16 use, or the place of storage.

17 (6) "Commission" means the fish and game commission
18 provided for in 2-15-3402.

19 (7) "Declaration" means the declaration of an existing
20 right filed with the department under section 8, Chapter
21 452, Laws of 1973.

22 (8) "Department" means the department of natural
23 resources and conservation provided for in Title 2, chapter
24 15, part 33.

25 (9) "Existing right" means a right to the use of water

1 which would be protected under the law as it existed prior
2 to July 1, 1973.

3 (10) "Ground water" means any water beneath the land
4 surface or beneath the bed of a stream, lake, reservoir, or
5 other body of surface water, and which is not a part of that
6 surface water.

7 (11) "Permit" means the permit to appropriate issued by
8 the department under 85-2-301 through 85-2-303 and 85-2-306
9 through 85-2-314.

10 (12) "Person" means an individual, association,
11 partnership, corporation, state agency, political
12 subdivision, the United States or any agency thereof, or any
13 other entity.

14 (13) "Political subdivision" means any county,
15 incorporated city or town, public corporation, or district
16 created pursuant to state law or other public body of the
17 state empowered to appropriate water but not a private
18 corporation, association, or group.

19 (14) "Salvage" means to make water available for
20 beneficial use from an existing valid appropriation through
21 application of water-saving methods.

22 ~~(14)~~ (15) "Waste" means the unreasonable loss of water
23 through the design or negligent operation of an
24 appropriation or water distribution facility or the
25 application of water to anything but a beneficial use.

~~(15)~~(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(16)~~(17) "Water division" means a drainage basin as defined in 3-7-102.

~~(17)~~(18) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(18)~~(19) "Water master" means a master as provided for in Title 3, chapter 7.

~~(19)~~(20) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989)

85-2-102. (Effective July 1, 1993) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to

agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or

1 other body of surface water, and which is not a part of that
2 surface water.

3 (10) "Permit" means the permit to appropriate issued by
4 the department under 85-2-301 through 85-2-303 and 85-2-306
5 through 85-2-314.

6 (11) "Person" means an individual, association,
7 partnership, corporation, state agency, political
8 subdivision, the United States or any agency thereof, or any
9 other entity.

10 (12) "Political subdivision" means any county,
11 incorporated city or town, public corporation, or district
12 created pursuant to state law or other public body of the
13 state empowered to appropriate water but not a private
14 corporation, association, or group.

15 (13) "Salvage" means to make water available for
16 beneficial use from an existing valid appropriation through
17 application of water-saving methods.

18 ~~(13)~~(14) "Waste" means the unreasonable loss of water
19 through the design or negligent operation of an
20 appropriation or water distribution facility or the
21 application of water to anything but a beneficial use.

22 ~~(14)~~(15) "Water" means all water of the state, surface
23 and subsurface, regardless of its character or manner of
24 occurrence, including but not limited to geothermal water,
25 diffuse surface water, and sewage effluent.

1 ~~(15)~~(16) "Water division" means a drainage basin as
2 defined in 3-7-102.

3 ~~(16)~~(17) "Water judge" means a judge as provided for in
4 Title 3, chapter 7.

5 ~~(17)~~(18) "Water master" means a master as provided for
6 in Title 3, chapter 7.

7 ~~(18)~~(19) "Well" means any artificial opening or
8 excavation in the ground, however made, by which ground
9 water is sought or can be obtained or through which it flows
10 under natural pressures or is artificially withdrawn."

11 **Section 3.** Section 85-2-402, MCA, is amended to read:

12 **"85-2-402. (Temporary) Changes in appropriation rights.**

13 (1) An appropriator may not make a change in an
14 appropriation right except as permitted under this section
15 and with the approval of the department or, if applicable,
16 of the legislature.

17 (2) Except as provided in subsections (3) through (5),
18 the department shall approve a change in appropriation right
19 if the appropriator proves by substantial credible evidence
20 that the following criteria are met:

21 (a) The proposed use will not adversely affect the
22 water rights of other persons or other planned uses or
23 developments for which a permit has been issued or for which
24 water has been reserved.

25 (b) Except for a lease authorization pursuant to

1 85-2-436 that does not require appropriation works, the
2 proposed means of diversion, construction, and operation of
3 the appropriation works are adequate.

4 (c) The proposed use of water is a beneficial use.

5 (d) The applicant has a possessory interest, or the
6 written consent of the person with the possessory interest,
7 in the property where the water is to be put to beneficial
8 use.

9 (e) If the change in appropriation right involves
10 salvaged water, the proposed water-saving methods will
11 salvage at least the amount of water asserted by the
12 applicant.

13 (3) The department may not approve a change in purpose
14 of use or place of use of an appropriation of 4,000 or more
15 acre-feet of water a year and 5.5 or more cubic feet per
16 second of water unless the appropriator proves by
17 substantial credible evidence that:

18 (a) the criteria in subsection (2) are met;

19 (b) the proposed change is a reasonable use. A finding
20 of reasonable use must be based on a consideration of:

21 (i) the existing demands on the state water supply, as
22 well as projected demands for water for future beneficial
23 purposes, including municipal water supplies, irrigation
24 systems, and minimum streamflows for the protection of
25 existing water rights and aquatic life;

1 (ii) the benefits to the applicant and the state;

2 (iii) the effects on the quantity and quality of water
3 for existing uses in the source of supply;

4 (iv) the availability and feasibility of using
5 low-quality water for the purpose for which application has
6 been made;

7 (v) the effects on private property rights by any
8 creation of or contribution to saline seep; and

9 (vi) the probable significant adverse environmental
10 impacts of the proposed use of water as determined by the
11 department pursuant to Title 75, chapter 1, or Title 75,
12 chapter 20.

13 (4) The department may not approve a change in purpose
14 of use or place of use for a diversion that results in 4,000
15 or more acre-feet of water a year and 5.5 or more cubic feet
16 per second of water being consumed unless:

17 (a) the applicant proves by clear and convincing
18 evidence and the department finds that the criteria in
19 subsections (2) and (3) are met; and

20 (b) the department then petitions the legislature and
21 the legislature affirms the decision of the department after
22 one or more public hearings.

23 (5) (a) The state of Montana has long recognized the
24 importance of conserving its public waters and the necessity
25 to maintain adequate water supplies for the state's water

requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of

subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the

proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(9) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(10) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage

by filing an application for change pursuant to this section.

(11) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section. (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989.)

85-2-402. (Effective July 1, 1993) Changes in appropriation rights. (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and

1 operation of the appropriation works are adequate.

2 (c) The proposed use of water is a beneficial use.

3 (d) The applicant has a possessory interest, or the
4 written consent of the person with the possessory interest,
5 in the property where the water is to be put to beneficial
6 use.

7 (e) If the change in appropriation right involves
8 salvaged water, the proposed water-saving methods will
9 salvage at least the amount of water asserted by the
10 applicant.

11 (3) The department may not approve a change in purpose
12 of use or place of use of an appropriation of 4,000 or more
13 acre-feet of water a year and 5.5 or more cubic feet per
14 second of water unless the appropriator proves by
15 substantial credible evidence that:

16 (a) the criteria in subsection (2) are met;

17 (b) the proposed change is a reasonable use. A finding
18 of reasonable use must be based on a consideration of:

19 (i) the existing demands on the state water supply, as
20 well as projected demands for water for future beneficial
21 purposes, including municipal water supplies, irrigation
22 systems, and minimum streamflows for the protection of
23 existing water rights and aquatic life;

24 (ii) the benefits to the applicant and the state;

25 (iii) the effects on the quantity and quality of water

1 for existing uses in the source of supply;

2 (iv) the availability and feasibility of using
3 low-quality water for the purpose for which application has
4 been made;

5 (v) the effects on private property rights by any
6 creation of or contribution to saline seep; and

7 (vi) the probable significant adverse environmental
8 impacts of the proposed use of water as determined by the
9 department pursuant to Title 75, chapter 1, or Title 75,
10 chapter 20.

11 (4) The department may not approve a change in purpose
12 of use or place of use for a diversion that results in 4,000
13 or more acre-feet of water a year and 5.5 or more cubic feet
14 per second of water being consumed unless:

15 (a) the applicant proves by clear and convincing
16 evidence and the department finds that the criteria in
17 subsections (2) and (3) are met; and

18 (b) the department then petitions the legislature and
19 the legislature affirms the decision of the department after
20 one or more public hearings.

21 (5) (a) The state of Montana has long recognized the
22 importance of conserving its public waters and the necessity
23 to maintain adequate water supplies for the state's water
24 requirements, including requirements for reserved water
25 rights held by the United States for federal reserved lands

1 and in trust for the various Indian tribes within the
2 state's boundaries. Although the state of Montana also
3 recognizes that, under appropriate conditions, the
4 out-of-state transportation and use of its public waters are
5 not in conflict with the public welfare of its citizens or
6 the conservation of its waters, the following criteria must
7 be met before out-of-state use may occur:

8 (b) The department and, if applicable, the legislature
9 may not approve a change in appropriation right for the
10 withdrawal and transportation of appropriated water for use
11 outside the state unless the appropriator proves by clear
12 and convincing evidence and, if applicable, the legislature
13 approves after one or more public hearings that:

14 (i) depending on the volume of water diverted or
15 consumed, the applicable criteria and procedures of
16 subsection (2) or (3) are met;

17 (ii) the proposed out-of-state use of water is not
18 contrary to water conservation in Montana; and

19 (iii) the proposed out-of-state use of water is not
20 otherwise detrimental to the public welfare of the citizens
21 of Montana.

22 (c) In determining whether the appropriator has proved
23 by clear and convincing evidence that the requirements of
24 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
25 department and, if applicable, the legislature shall

1 consider the following factors:

2 (i) whether there are present or projected water
3 shortages within the state of Montana;

4 (ii) whether the water that is the subject of the
5 proposed change in appropriation might feasibly be
6 transported to alleviate water shortages within the state of
7 Montana;

8 (iii) the supply and sources of water available to the
9 applicant in the state where the applicant intends to use
10 the water; and

11 (iv) the demands placed on the applicant's supply in the
12 state where the applicant intends to use the water.

13 (d) When applying for a change in appropriation right
14 to withdraw and transport water for use outside the state,
15 the applicant shall submit to and comply with the laws of
16 the state of Montana governing the appropriation and use of
17 water.

18 (6) For any application for a change in appropriation
19 right involving 4,000 or more acre-feet of water a year and
20 5.5 or more cubic feet per second of water, the department
21 shall give notice of the proposed change in accordance with
22 85-2-307 and shall hold one or more hearings in accordance
23 with 85-2-309 prior to its approval or denial of the
24 proposed change. The department shall provide notice and may
25 hold one or more hearings upon any other proposed change if

1 it determines that such a change might adversely affect the
2 rights of other persons.

3 (7) The department or the legislature, if applicable,
4 may approve a change subject to such terms, conditions,
5 restrictions, and limitations as it considers necessary to
6 satisfy the criteria of this section, including limitations
7 on the time for completion of the change. The department may
8 extend time limits specified in the change approval under
9 the applicable criteria and procedures of 85-2-312(3).

10 (8) If a change is not completed as approved by the
11 department or legislature or if the terms, conditions,
12 restrictions, and limitations of the change approval are not
13 complied with, the department may, after notice and
14 opportunity for hearing, require the appropriator to show
15 cause why the change approval should not be modified or
16 revoked. If the appropriator fails to show sufficient cause,
17 the department may modify or revoke the change approval.

18 (9) The original of a change approval issued by the
19 department must be sent to the applicant, and a duplicate
20 must be kept in the office of the department in Helena.

21 (10) A person holding an issued permit or change
22 approval that has not been perfected may change the place of
23 diversion, place of use, purpose of use, or place of storage
24 by filing an application for change pursuant to this
25 section.

1 (11) A change in appropriation right contrary to the
2 provisions of this section is invalid. No officer, agent,
3 agency, or employee of the state may knowingly permit, aid,
4 or assist in any manner such unauthorized change in
5 appropriation right. No person or corporation may, directly
6 or indirectly, personally or through an agent, officer, or
7 employee, attempt to change an appropriation right except in
8 accordance with this section."

9 NEW SECTION. **Section 4.** Codification instruction.

10 [Section 1] is intended to be codified as an integral part
11 of Title 85, chapter 2, part 4, and the provisions of Title
12 85, chapter 2, part 4, apply to [section 1].

13 NEW SECTION. **Section 5.** Saving clause. [This act] does

14 not affect rights and duties that matured, penalties that
15 were incurred, or proceedings that were begun before [the
16 effective date of this act].

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0265, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill clarifies the statute with respect to the right to salvaged water, a right DNRC already recognizes. By clarifying the statute, however, there is likely to be an increase in the number of applications to DNRC for change in appropriation rights.

ASSUMPTIONS:

1. There will be an additional four change applications involving salvage water per year.
2. Objections will be received on three of the applications.
3. Two applications with objections will proceed to contested-case hearing.
4. The DNRC cost to administratively process one change application is \$300 (\$50 operating expense and \$250 personal services, shown as contracted services).
5. The DNRC cost to address and handle objections for each application is \$500 (\$50 operating expense and \$450 personal services).
6. The DNRC cost to hold one contested-case hearing is \$1,200 (\$120 operating expense and \$1,080 personal services).
7. The DNRC collects \$50 for each application for a change in appropriation right.
8. The DNRC cost to adopt and publish administrative rules to implement this legislation will be \$1,500 for FY92 (\$1,000 operating expense and \$500 personal services).
9. The DNRC cost to prepare and print new forms to implement this legislation will be \$1,225 for FY92 (\$1,225 operating expense).
10. No FTE are indicated at this time, but FTE may be requested later, depending on the total workload resulting from session bills.

FISCAL IMPACT:Department of Natural Resources and Conservation:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Costs	224,816	232,641	7,825	224,175	229,275	5,100
<u>Funding:</u>						
General Fund	1,493,710	1,501,335	7,625	1,491,118	1,496,018	4,900
Water Rights Fees (02)	79,979	80,179	200	79,911	80,111	200
Total	1,573,689	1,581,514	7,825	1,571,029	1,576,129	5,100

 2-7-91
 ROD SUNDSTED BUDGET DIRECTOR
 Office of Budget and Program Planning

DATE

 2/11/91
 LORENTS GROSFIELD PRIMARY SPONSOR

DATE

Fiscal Note for SB0265 as introduced**SB 265**

the ditch. Property owners know how much water they have coming off it. They hire a ditch writer, but there is no legal entity for that particular series of ditches and laterals.

REP. ELLISON asked how surveyors determine the width of the easement. Mr. Gustine said that is where he runs into problems. He can find the ones that are recorded.

REP. ELLISON said he is trying to determine what the Legislature will accomplish with this bill. He is hearing the same problems that have been heard before. He recounted a previous bill from a past session and said he believes the Legislature did about all it could legally do then. REP. BENGTON asked REP. ELLISON if he were implying that this bill is unnecessary. She said there have been a number of lawsuits since that time. There hasn't been a lawsuit a ditch company has lost because rights-of-way have been there.

Closing by Sponsor:

REP. BENGTON said she is baffled by surveyors' opposition to the bill. If it is not a public record, they do not have to worry about anything. They would not be required to put it on their certificate of survey. She assumed Mr. Gustine was talking about private irrigation districts in Gallatin County, where he struggled to find owners. This bill applies to only public irrigation districts. There are records all over the place. If the information is not on record, then they are off the hook. It serves notice to water-user associations or entities to get it on record so that surveyors have a place to go.

Realtors say they want informed buyers and sellers. All they're asking is to have this information noted on the certificate of survey. Water-user associations will have to notify irrigation districts that this is their responsibility to get this on record someplace. Surveyors should develop a process. They should look at this and find a way to get it into the certificate of survey. It isn't known what will happen to HB 671. Testimony given by surveyors doesn't hold water. She urged passage of SB 195.

HEARING ON SB 265

Presentation and Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 41 in Big Timber, said SB 265 was requested by the governor. It is a salvage water bill. He read Section 1 on Pages 1-2, the definition of salvage on Page 4, and part E on Page 9.

Proponents' Testimony:

Ed Lord, Montana Stockgrowers Association Vice President, supported SB 265. EXHIBIT 7

Gary Fritz, DNRC, said he saw a similar bill last session. SB 265 is not a product of bureaucracy. It is a product of the state Water Plan. The Drought Management Steering Committee thought it would be a good idea to clarify state law to ensure it provides incentive for existing water users to conserve water. He distributed a copy of the Drought Management Section of the Montana Water Plan. **EXHIBIT 8**

Through the water planning process, the bill's concept received widespread support. Reference to the legislation is on Page 6, Item 12. The bill defines what is meant by salvage. The water user who invests money in a project that saves water has the right to use the saved water.

The bill does not change existing law regarding who can object to alleged water savings or whose rights must be protected in terms of impacts from use of saved water. The bill will allow an irrigator to use the saved water on additional lands or lease the water for instream flow purposes of the Department of Fish, Wildlife and Parks (FWP). Other water rights cannot be adversely affected. That part of the statute is not changed.

People who believe they will be adversely affected can object. Depending on the facts of the case, they may be able to stop a water conservation measure from being implemented.

Irrigators on Mill Creek are talking about putting their water in a pipe, irrigating their land by gravity sprinklers and leasing the saved water to FWP under the Instream Flow Leasing Program. This bill clarifies and makes certain that irrigators have the right to do that.

Lorna Frank, Montana Farm Bureau, supported SB 265. EXHIBIT 9

Gary Spaeth, Montana Water Users Coalition, supported SB 265. He said the coalition wants to ensure the intent of the bill, as it relates to the definition of salvaged water, does not change the present law regarding the burden of a water right. If it does, the coalition would like to know.

Mr. Stan Bradshaw, Trout Unlimited, said that last session, the bill regarding this issue did not allow leasing. As long as that provision remains in the bill, Trout Unlimited supports it.

Ms. Jo Brunner, Montana Water Resources Association, supported SB 265.

Scott Snelson, Montana Wildlife Federation, supported SB 265.

David Valdseth, Martinsdale rancher, supported SB 265.

Opponents' Testimony: None.

Questions from Committee Members:

REP. DOLEZAL asked how someone determines the amount of water saved. Mr. Fritz said the applicant must provide evidence of exactly how much water is being saved. If someone objects, the matter must go through the hearing process. There are formulas and scientific methods that can be used to estimate the amount of water that may be saved.

REP. REAM agreed to carry the bill on the floor. He asked to be recorded as a proponent of the bill.

Closing by Sponsor:

SEN. GROSFIELD said Mr. Spaeth is concerned there will be an increased burden on the water in a creek someplace. This bill does not intend to increase the burden. In the change process, it must be shown that no adverse affects will result. That is the key to the bill. If that can be demonstrated, everyone benefits. It provides incentive for improved efficiency in water use. In response to Mr. Lord's concern, the Department can approve a change subject to terms, conditions, restrictions, limitations or whatever is necessary to satisfy criteria beginning on Line 6 under subsection 7, Page 13 of the bill.

HEARING ON SB 266

Presentation and Opening Statement by Sponsor:

SEN. GROSFIELD said SB 266 was requested by DNRC and addresses clean-up. It changes the definition of groundwater and reporting requirements. It also provides for some notification. He reviewed the bill.

On Page 3, the current definition of groundwater makes it difficult to determine if it refers to groundwater or surface water. The Department spends a lot of time and expense trying to determine that. Department field offices have arrived at different conclusions about whether water is hydrologically connected to surface water. The proposed definition eliminates that problem and simplifies the definition.

On Pages 9-10, language regarding the quarterly report was struck. DNRC has been sending quarterly reports of all certificates of water right to county clerk and recorders. Counties aren't using the reports. Testimony in the Senate committee indicated some counties didn't know where the information was, and some clerk and recorders asked DNRC to stop sending the reports because they didn't know how to interpret them. A statement of intent at the end of the bill indicates clerk and recorders can request the reports from DNRC.

He reviewed changes on Pages 14 and 19, which indicate a person must notify DNRC when the water is finished being put to beneficial use. Current law requires DNRC to do an onsite inspection. The agency is 8,500 permits behind in its

REP. RANEY said the language will be inserted in the statement of intent section of the bill.

Vote: Motion to amend SB 136 carried unanimously.

Motion: REP. TOOLE moved to amend SB 136. EXHIBIT 6

Discussion: REP. RANEY said the amendment was proposed by the city of Missoula and addresses the 4.5 mile limit.

REP. WANZENRIED said the Lewis and Clark County Board of Health opposes the amendment. REP. O'KEEFE stated that he doesn't like the amendment unless it gives the county the same kind of approval over the city. The committee is establishing governmental agreements. There is room to participate and negotiate in this bill. He doesn't see the need for the amendment. The fact that it was killed in the Senate and in the subcommittee that worked on the bill indicates there is a lot more opposition to it. The bill is a good compromise and should be left alone.

REP. ELLISON said he agrees. All the amendment will do is get this bill into a conference committee. REP. FAGG said he agreed.

Vote: Motion carried unanimously.

Motion/Vote: REP. O'KEEFE MOVED SB 136 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

REP. RANEY said REP. WANZENRIED would carry SB 136.

EXECUTIVE ACTION ON SB 195

Discussion: REP. O'KEEFE said he would like to move to table the bill because SB 195 language was included in REP. GILBERT's subdivision bill.

REP. RANEY said he wouldn't have a problem taking the bill back off the table if it is needed. He reiterated that SB 195 language is in REP. GILBERT's bill.

Motion/Vote: REP. O'KEEFE MOVED SB 195 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 211

Discussion: REP. COHEN said he would like to wait on the bill. He spoke to Steve Pilcher, DHES Environmental Sciences Division Administrator, and others in Water Quality. They are working on some coordinating amendments for the committee. REP. RANEY agreed to wait.

EXECUTIVE ACTION ON SB 265

Motion/Vote: REP. ELLISON MOVED SB 265 BE CONCURRED IN. Motion carried unanimously.

REP. RANEY said the bill will be carried by REP. REAM.

ADJOURNMENT

Adjournment: 6:30 p.m.



REP. BOB RANEY, Chairman



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3/14/91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

HOUSE STANDING COMMITTEE REPORT

March 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that Senate Bill 265 (third reading copy -- blue) be concurred
in .

Signed: Bob Raney
Bob Raney, Chairman

Carried by: Rep. Ream

MONTANA WATER PLAN

FINAL

December 1990

Section: Drought Management

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ED LORD, RANCHER
MONTANA STOCKGROWERS ASSOCIATION
TESTIMONY ON SENATE BILLS 265
March 14, 1991

GOOD AFTERNOON MR. CHAIRMAN AND MEMBERS OF THE NATURAL RESOURCES COMMITTEE. THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON SENATE BILL 265. FOR THE RECORD MY NAME IS ED LORD AND I AM A CATTLE RANCHER FROM PHILIPSBURG. I AM THE PRESIDENT OF THE FLINT CREEK WATER USERS ASSOCIATION, A STATE WATER PROJECT. IN ADDITION, I USE DECREED WATER RIGHTS, APPROPRIATED WATER RIGHTS AND USE WATER RIGHTS. TODAY I REPRESENT MY FAMILY AND THE MONTANA STOCKGROWERS ASSOCIATION IN MY CAPACITY AS FIRST VICE PRESIDENT.

I AM TESTIFYING IN SUPPORT OF SENATE BILL 265. AS A PRACTICAL MATTER THIS BILL PROBABLY WON'T DO ANYTHING MORE THAN IS ALREADY BEING DONE AT THE PRESENT TIME. HOWEVER, IT DOES SAY THE PERSON WHO SALVAGES WATER HAS THE RIGHT TO USE THAT WATER ON ADDITIONAL LAND, SELL IT OR LEASE IT TO SOMEONE ELSE PROVIDED HE OBTAINS THE NECESSARY PERMITS FROM THE DNRC. I WOULD ASK THE DNRC GRANT ONLY CONDITIONAL PERMITS PERTAINING TO SALVAGED WATER AND THE DOWNSTREAM USERS BE ALLOWED TO HAVE THE PERMIT REVOKED IF THEY CAN PROVE THEY HAVE BEEN HARMED BY THIS CHANGE OF USE.

AGAIN, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON SENATE BILL 265.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SB 265
 DATE 3/14/91 SPONSOR(S) Sen Grosfield - Beneficial use of salvaged
with
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Bradshaw	MTU	✓	
Ed Lord	MSGA	✓	
Martin Barber	H.P.A.	✓	
CAROL MOSHER	MT. CATTLE WOMEN	✓	
Jo Brummer	MWA	✓	
Donald Berg	self	✓	
Lorna Frank	Mt. Farm Bureau	X	
David A. Valhalla	self	✓	
Gary Aspaeth	MT. Water Users Coalition	X	

**PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Lawrence Stimatz, on February 11, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: Steve Doherty (D)

Staff Present: Michael Kakuk (EQC).
Roberta Opel, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SB 265

Presentation and Opening Statement by Sponsor:

Senator Grosfield, District 41, provided committee members with his amendments to SB 265. (EXHIBIT #1). The bill clarifies who owns water that is salvaged, Grosfield explained. SB 265 establishes within the statutes that the owner of the water right is the owner of water that he salvages, said Grosfield. The burden is on the appropriator to prove that he is truly saving the amount of water he claims, Grosfield noted.

Proponents' Testimony:

Ed Lord, Montana Stockgrowers Association, appeared in support of SB 265 and submitted an amendment to the bill's Statement of

Intent. (EXHIBIT #2).

Gary Fritz, Department of Natural Resources and Conservation (DNRC) told the committee that SB 265 was being introduced at the request of the governor as it is a product of the state water plan. (EXHIBIT #3).

Holly Franz, on behalf of Montana Power, appeared in support of SB 265 which supports the use of "better efficiencies of water." Franz stated that she felt there was an ambiguity in the definition of salvaged water. Franz said the bill should not allow an appropriator to use water that was previously returned to the source of supply. In agricultural use of water, a large part of that water returns back to the source of supply and is used by subsequent appropriators (commonly called return flows). "I don't believe this is the intent of this bill," Franz stated. Franz's suggested to the committee that the language used in SB 265 is not the language water attorney's are accustomed to using. Franz suggested inserting the phrase that if you take water that otherwise would be lost and put that water to beneficial use, then you should be entitled to that water. (Franz did not provide a copy of this amendment).

Ted Doney, an attorney with Doney and Thorson Law Firm, told the committee he specialized in water law and was appearing in support of SB 265 on his own behalf. Doney stated that he shared the concerns of Franz and felt there needed to be statutes adopted that would allow people to salvage drainage and waste water. Doney stood in support of Franz's proposed amendment which he said would clarify the definition of the word salvage so that drain and waste water, rather than return flow, would be incorporated.

Jo Brunner, Montana Water Resources Association, appeared in support of SB 265 and the amendment proposed by Franz.

Stan Bradshaw, Montana Trout Unlimited, presented an amendment to SB 265 to committee members. (EXHIBIT #4). Bradshaw also offered support of the amendment by Franz.

Scott Snelson, Montana Wildlife Federation, stated SB 265 was a "very good law to hold instream water rights".

Lorraine Gillies, Montana Farm Bureau Federation, testified in support of SB 265. (EXHIBIT #5).

Opponents' Testimony:

There were no oppponent's to SB 265.

Questions From Committee Members:

Senator Hockett asked why there was a 10 year period objection period in Ed Lord's amendment. Lord explained that time period was consistent with current leasing time spans.

Chairman Stimatz asked Lord if he had any technical data or books on return flow and the length of time return flow might take. Lord told the committee that every situation differed. In some cases it may take a month for water to travel underground and in other cases it may take two days.

(Ted Doney provided a presentation on water runoff and irrigational situations to the committee). The purpose of SB 265 is to make it clear that an appropriator can capture drainage and waste water (NOT the return flow) and put it back to use, Doney said.

Senator Keating asked for the DNRC's response to the presentation by Doney. Gary Fritz, DNRC, told the committee that he was glad the question about the amendments presented by Holly Franz were raised because they presented the fundamental policy decision that the legislature will have to make. These amendments would only allow an irrigator to salvage water that is otherwise irretrievable. This amount of water is typically a very, very small amount, said Fritz. By accepting those suggested amendments, Fritz said, you will be allowing irrigators the right to claim on a very small amount of salvaged water. DNRC has chosen to write this bill, Fritz said, to allow an irrigator to salvage not only the water irretrievably lost through evaporation or deep groundwater but also to salvage this return flow as long as others are not adversely impacted. (Fritz presented amendments with the same wordage as those proposed by Senator Grosfield).

Closing by Sponsor:

Senator Grosfield told the committee that the amendment offered by Franz and Doney "doesn't quite solve the problem because it doesn't allow those irrigators to lease that water." Grosfield added that he was "not enthusiastic" about the amendments offered by Stan Bradshaw.

HEARING ON SB 266Presentation and Opening Statement by Sponsor:

Senator Grosfield, District 41, told the committee that SB 266 defines the term groundwater as any water beneath the ground's surface and also clarifies the recording of water rights with respect to county clerk's and recorder's. Grosfield distributed amendment's to the committee. (EXHIBIT #1).

ROLL CALL

Natural Resources COMMITTEE

DATE 2-11-91

52nd

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson			✓
Senator Bianchi	✓		
Senator Doherty			✓
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
Senator Tveit	✓		
Vice Chairman, Weeding	✓		
Chairman, Stimatz	✓		

Each day attach to minutes.

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE

2-11-91

BILL NO.

SB 265

Amendments to Senate Bill No. 265
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 11, 1991

1. Title, line 8 through line 10.

Following: "WATER;" on line 8

Strike: "ESTABLISHING" on line 8 through "FORFEITED;" on line 10

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-11-91

BILL NO. SB 265

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
AMENDMENTS TO SENATE BILL NO. 265

1. Title, lines 8 through 10

Following: "WATER;"

Strike: "ESTABLISHING" on line 8 through "FORFEITED;" on line 10

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2-11-91

BILL NO. SB 265

ED LORD, RANCHER
MONTANA STOCKGROWERS ASSOCIATION
TESTIMONY ON SENATE BILLS 265
February 11, 1991

GOOD AFTERNOON MR. CHAIRMAN AND MEMBERS OF THE NATURAL RESOURCES COMMITTEE. THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON SENATE BILL 265. FOR THE RECORD MY NAME IS ED LORD AND I AM A CATTLE RANCHER FROM PHILIPSBURG. I AM THE PRESIDENT OF THE FLINT CREEK WATER USERS ASSOCIATION, A STATE WATER PROJECT. IN ADDITION, I USE DECREED WATER RIGHTS, APPROPRIATED WATER RIGHTS AND USE WATER RIGHTS. TODAY I REPRESENT MY FAMILY AND THE MONTANA STOCKGROWERS ASSOCIATION IN MY CAPACITY AS FIRST VICE PRESIDENT.

I AM TESTIFYING IN SUPPORT OF SENATE BILL 265, BUT RESPECTFULLY SUBMIT THE FOLLOWING AMENDMENT TO THE STATEMENT OF INTENT, BEGINNING ON LINE 22:

"THE LEGISLATURE FURTHER DIRECTS THE DEPARTMENT OF NATURAL RESOURCES TO ISSUE TEMPORARY PERMITS TO APPROPRIATE SALVAGED WATER FOR A PERIOD OF 10 YEARS. AT THE END OF THE 10-YEAR PERIOD, THE PERMIT WILL NOT BE MADE PERMANENT IF ANY OTHER APPROPRIATOR SUBMITS EVIDENCE OF ADVERSE EFFECTS TO THEIR RIGHTS THAT HAVE NOT BEEN CONSIDERED PREVIOUSLY. IF NEW EVIDENCE IS SUBMITTED, A NEW PERMIT AUTHORIZATION MUST BE OBTAINED ACCORDING TO THE REQUIREMENTS OF 85-2-402."

AGAIN, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON SENATE BILL 265 AND WE URGE YOU TO VOTE "DO PASS" ON SENATE BILL 265 WITH THE AMENDMENT.

LC 0906

SB 265

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

February 11, 1991

DATE 2-11-91
BILL NO. SB 265

By request of the Governor:
A Bill for an Act entitled:

"An Act clarifying the right to beneficially use, sell, or lease salvaged water; defining "salvage"; providing criteria for approval of changes in appropriation rights involving salvaged water; establishing the period of non-use after which the right to salvaged water is forfeited; amending sections 85-2-102 and 85-2-402, MCA."

Purpose

The purpose of this bill is to provide an incentive for water conservation by clarifying that water users retain the right to the water they salvage. The bill would provide the appropriator with the options of using the salvaged water for any beneficial purpose, selling it to another individual for any beneficial use, or leasing it for instream purposes under the leasing study.

Background

This legislation is recommended by both the "Agricultural Water Use Efficiency" and "Drought Management" sections of the State Water Plan. As such, the concept of water salvage has undergone extensive public review and comment over the last three years.

To salvage water, a water right holder must obtain state approval and follow the same procedure used by any other appropriator desiring to change his appropriation right. Other appropriators have the right to object, and the use of salvaged water may not adversely affect another water right user from the source of supply.

An important part of considering a water right change application involving salvaged water is determining the amount of water that is salvaged. This bill places the burden of proof upon the applicant to show that water saving methods will salvage the amount of water claimed.

Implementation

This bill leaves it to individual water users to apply for a water right change involving salvaged water. The DNRC is responsible for administering existing laws governing water right change proceedings.

Fiscal Impact

Hearing costs could increase for complicated change applications involving salvaged water. It is difficult to predict how many such applications would be received. About \$5,000 in new costs related to processing an additional 4 change applications per year. In addition, another \$2,750 in start-up costs related to rules adoption and forms revision and printing are projected for the first fiscal year.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 2-11-81
BILL NO. SB 265

SENATE BILL 265
Proposed Amendments to SB 265
Proposed by Montana Trout Unlimited

Page 2, Line 10, strike "lease", and insert in its place "TRANSFER".

Page 2, Line 11, strike "." and insert "OR AS OTHERWISE EXPRESSLY AUTHORIZED BY LAW."



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

2-11-91
SENATE NATURAL RESO

EXHIBIT NO. 5

DATE 2-11-91

BILL NO. SB 265

BILL # SB 265; TESTIMONY BY: Lorraine Gillies

DATE 2-11-91; SUPPORT Support; OPPOSE _____

Mr. Chairman, members of the Committee:

For the record, I am Lorraine Gillies, representing Montana Farm Bureau.

We speak in support of SB 265 as a means of giving definitive wording in regard to the right of leasing or selling salvaged water, making clear the appropriation rights to salvaged water. The definition of salvaged water, and also the requirements are clearly and satisfactorily stated.

We urge the committee give do-pass recommendation to SB 265.

Thank you.

SIGNED: _____

Recommendation and Vote:

Motion by Senator Bianchi that SJR 18 DO PASS carried unanimously.

EXECUTIVE ACTION ON SB 210

Motion:

Motion by Senator Keating to Table SB 210.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Keating to Table SB 210 carried unanimously.

EXECUTIVE ACTION ON SB 265

Motion:

Motion by Senator Bengtson that SB 265 DO PASS as amended.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

Motion by Senator Grosfield to move his amendments to SB 265 (EXHBIT #1). Motion carried.

Recommendation and Vote:

Motion by Senator Bengtson that SB 265 DO PASS as amended carried unanimously.

ROLL CALL

Natural Resources COMMITTEE

DATE 2-18-91

52nd

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson	✓		
Senator Bianchi			
Senator Doherty	✓		
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
Senator Tveit	✓		
Vice Chairman, Weeding	✓		
Chairman, Stimatz	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 19, 1991

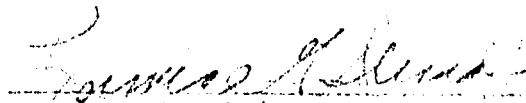
MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 265 (first reading copy - white), respectfully report that Senate Bill No. 265 be amended and as so amended do pass:

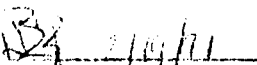
1. Title, line 8 through line 10.

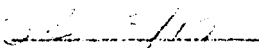
Following: "WATER;" on line 8

Strike: "ESTABLISHING" on line 8 through "FORFEITED;" on line 10

Signed: 

Lawrence G. Blimatz, Chairman


Amd. Coord.

 11-105
Sec. of Senate

Amendments to Senate Bill No. 265
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 11, 1991

1. Title, line 8 through line 10.

Following: "WATER;" on line 8

Strike: "ESTABLISHING" on line 8 through "FORFEITED;" on line 10

2-18-91
SB 26